RECENT DECISIONS

ADVERSE POSSESSION—COLOR OF TITLE—INTENTION OF OCCUPANT.—The defendant purchased certain property, adjoining the plaintiff's lot, the supposed boundary fence to the purchased property being situated far over on the plaintiff's lot. The defendant claimed and occupied up to this fence for more than the statutory period, after which the plaintiff brought an action of ejectment to recover the strip of land between the actual boundary and the fence. Held, the plaintiff cannot recover, since the holding of the defendant is adverse, and vests title in him. *Bossom* v. *Gillman* (Fla.), 70 South. 364.

It is an elementary principle of the law of adverse possession that where a person has been in honest, uninterrupted and adverse possession of land for the period prescribed by the statute of limitations, the lapse of time not only operates as a bar to an action by the former owner, but vests in him the title to the land. See MINOR, REAL PROP., § 1021; TIFFANY, REAL PROP., § 436. But as to the character of the holding necessary in order to constitute adverse possession, there is much conflict.

It is apparently settled in some jurisdictions that unless the occupation be with an actual intention to claim the property at all events, even though it may later appear that such property does not belong to the claimant, or, as it is usually stated, unless the claim of right be as broad as the possession, the possession is not adverse. *Preble* v. *Maine Central R. Co.*, 85 Me. 260, 27 Atl. 149, 35 Am. St. Rep. 366, 21 L. R. A. 829, and note; *Schaubuch* v. *Dillemuth*, 108 Va. 86, 60 S. E. 745; *Griffin* v. *Brown* (Ia.), 149 N. W. 833. Thus, under his theory, where a party occupies certain property under a mistake as to the location of the true boundary, and with an intention to claim only the land belonging to him under the terms of his deed of conveyance, his holding does not constitute adverse possession. *McCabe* v. *Bruere*, 153 Mo. 1, 54 S. W. 450; *Griffin v. Brown, supra.* And, although such possession is continued for the statutory period, it will not operate to divest the real owner of title to the land in dispute. *Kahl* v. *Schmidt*, 107 Ia. 550, 78 N. W. 204; *Preble* v. *Maine Central R. Co., supra*; see also, *Finch* v. *Ullman*, 105 Mo. 255, 16 S. W. 863, 24 Am. St. Rep. 383, and note.

But it has been held, and by probably the weight of authority, that although the possession of the land has been taken under a mistake as to the true boundary line, such holding may constitute adverse possession. *French* v. *Pierce*, 8 Conn. 439, 21 Am. Dec. 680; *Turner* v. *Morgan*, 158 Ky. 511, 165 S. W. 684; *Wissinger* v. *Reed*, 69 Wash. 684, 125 Pac. 1030. And the modern tendency seems to be that where a person occupies land to a certain visible boundary, claiming such land as his own, even though he believes such boundary to be the true line, yet this mistake on his part will not destroy the adverse character of his holding, and if continued for the statutory period it will vest title to the property in him. *Woodward* v. *Faris*, 109 Cal. 12, 41 Pac. 781; *Daily* v.

Boudreau, 231 Ill. 228, 83 N. E. 218; *Baty* v. *Elrod*, 66 Neb. 735, 97 N. W. 343. This would seem to be the better rule, since to hold that the possession is not adverse if held innocently and through mistake is to introduce a new element into the law of adverse possession, whereby the more satisfactory and stable evidence of visible possession is supplanted by an inquiry into the invisible motives and intentions of the occupant, which are matters difficult of determination and even more difficult of proof. *French* v. *Pierce*, *supra*. See MINOR, REAL PROP., § 1036; WARVELLE, EJECTMENT, §§ 440, 441.

BULK SALES ACT—SCOPE—TRANSFER TO CREDITOR IN SATISFACTION OF DEBT.—A dealer in merchandise transferred his stock to his creditor, upon an agreement that the creditor should sell and remit the remaining proceeds to the debtor, after deducting the amount of the indebtedness. No notice of the transaction was given to the other creditors of the debtor in accordance with the bulk sales act of that state. *Held*, notice was unnecessary, as the transaction was not within the purview of the act. *Des Moines Packing Co.* v. *Uncaphor* (Iowa), 156 N. W. 171. See NOTES, p. 550.

CARRIERS—CARRIAGE OF PASSENGERS—DUTY OF CARRIER.—A passenger on an interurban car was negligently carried past his destination, and set out to walk back to that place on the railway track. While crossing a trestle in the course of his walk, he was struck by one of the railway's cars and was killed. This action was then brought by the father of the infant decedent to recover for the loss of his services. *Held*, a recovery is allowed. *Terre Haute I. & E. Traction Co.* v. *Hunter* (Ind.), 111 N. E. 344.

Where a contract of carriage is made between a passenger and carrier, the carrier is under a duty to stop at the passenger's destination. *Hall* v. *E. L. & E. R. Co.*, 66 Tex. 619, 2 S. W. 831; *Caldwell* v. *Richmond & D. Ry. Co.*, 89 Ga. 550, 15 S. E. 678. And where the passenger is carried beyond his destination, damages for the breach of the contract may be recovered. *E. & R. R. Co.* v. *Kyte*, 6 Ind. App. 52, 32 N. E. 1134; *Reimard* v. *Bloomsburg & S. R. Co.*, 228 Pa. 384, 77 Atl. 560; *A. C. G. & R. Ry. Co.* v. *Cox*, 173 Ala. 629, 55 South. 909. If no actual injury can be shown, nominal damages may nevertheless be recovered. *Sappington* v. *A. & W. R. R. Co.*, 127 Ga. 178, 56 S. E. 311. Where the passenger is willfully carried past his destination, exemplary damages may be awarded. *Samuels* v. *R. & D. R. Co.*, 35 S. C. 493, 14 S. E. 943, 28 Am. St. Rep. 883; *Harlan* v. *Wabash Ry. Co.*, 117 Mo. App. 537, 94 S. W. 737. And some courts hold that damages caused from sickness induced by exposure are too remote to support a recovery in such cases. *Hobbs* v. *L. & S. W. Ry.* Co., L. R. 10 Q. B. 111, 44 L. J. Q. B. 49, 32 L. T. Rep. N. S. 352; *Childs* v. *N. Y. O. & W. Ry. Co.*, 77 Hun. (N. Y.) 539, 28 N. Y. Sup. 894.

Much of the seeming conflict here, however, can be cleared up by observing the nature of the action brought. Where the action is for the breach of the contract, recovery is allowed only for damages which may be reasonably supposed to have been in the contemplation of the